

## **TITLE 27**

### **45-DAY PUBLIC NOTICE AND COMMENT PERIOD**

#### **THE SECRETARY AND THE CUPAs= RESPONSIBILITIES REGARDING THE STATE SURCHARGE**

**Department Reference Number: R-00-10**

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**NOTICE IS HEREBY GIVEN** that the California Environmental Protection Agency (Cal/EPA) proposes to amend Title 27, California Code of Regulations (CCR), Division 1, Subdivision 4, Chapter 1, sections 15110 and 15240. The proposed amendments to these regulations affect both the Secretary for Cal/EPA (Secretary) and the Certified Unified Program Agencies= (CUPAs) responsibilities regarding the State surcharge. Although, these regulations were initially issued for public review on September 10, 1999 under the R-98-35 (Unified Program Surcharge Component), the rulemaking lapsed on September 10, 2000 before being adopted.

This rulemaking proposes to combine the R-98-35 rulemaking with the R-00-06 (CUPA Oversight and Program Management Costs) emergency rulemaking currently in effect. It takes into consideration those comments received during the R-98-35 rulemaking public notice and comment period (including the public hearing, which was held on October 25, 1999). The R-00-06 emergency rulemaking currently allows the Secretary to set the State surcharge and expend the funds to cover the necessary and reasonable costs of all State agencies implementing the Unified Program. The R-98-35 rulemaking previously would have allowed the term *Asurcharge@* to be used interchangeably with the term *Aservice charge@* and would have made other minor changes. The combined rulemaking (R-98-35 and R-00-06) will be consistent with the provisions of Assembly Bill 2872, (Chapter 144, Statutes of 2000), Health and Safety Code (HSC) section 25404.5(b)(1), which allows the Secretary to annually set the State surcharge to cover the necessary and reasonable costs of all State agencies responsible for administering the Unified Program including: (Cal/EPA), the State Water Resources Control Board (SWRCB), the Governor=s Office of Emergency Services (OES), the Office of the State Fire Marshall (OSFM), and the Department of Toxic Substances Control (DTSC).

This rulemaking will allow the CUPAs to be more consistent and more efficient when billing and collecting the State surcharge since prior to the adoption of Assembly Bill (AB) 2872 and the emergency regulations not all State agencies responsible for implementing the Unified Program were funded by the State surcharge and confusion occurred as to which State surcharge should be billed or collected by the CUPAs. This rulemaking will

effectively eliminate these problems because it will allow the Secretary to establish only one State surcharge and that surcharge will be used to fund all State agencies responsible for implementing the Unified Program.

## **PUBLIC HEARING AND WRITTEN COMMENT PERIOD**

Cal/EPA will hold a public hearing at 10:00 a.m. on September 25, 2001, in the Sierra Hearing Room, Second Floor, 1001 I Street, Sacramento, California, at which time any person may present statements or arguments orally or in writing, relevant to this proposal. Please submit written comments to Ms. Joan Ferber, Regulations Analyst, Environmental Analysis and Regulations Section, Department of Toxic Substances Control, P.O. Box 806, Sacramento, California, 95812-0806. Written comments can also be sent by fax to (916) 323-3215 or email to [jferber@dtsc.ca.gov](mailto:jferber@dtsc.ca.gov). Written comments submitted no later than 5:00 p.m. on September 25, 2001 will be considered.

Representatives of Cal/EPA will preside at the hearing. Persons who wish to speak are requested to register before the hearing. Pre-hearing registration will be conducted at the location of the hearing from 9:30 a.m. to 10:00 a.m. Registered persons will be heard in the order of their registration. Any other person wishing to speak at the hearing will be afforded an opportunity after the registered persons have been heard.

## **AUTHORITY AND REFERENCE**

These regulations are being adopted under the authority of the HSC sections 25150; 25404(b), (c), (d) and (e); 25404.5(b); 25404.6 (c); 25531.2 and 25534. Reference: HSC sections 25404(b), (c), (d) and (e); 25404 (c) and (d); 25404.5(a) and 25532(k); Revenue and Taxation Code section 43006; and the 1996 United States Environmental Protection Agency Enforcement Response Policy for the Resource Conservation and Recovery Act.

## **INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW**

Chapter 6.11 of the HSC, Division 20, commencing with section 25404 establishes the Unified Program. The Unified Program is administered by the Secretary, and is implemented at the local level by the CUPAs. The State agencies responsible for the administration of the Unified Program are: the Cal/EPA, the SWRCB, the OES, the OSFM, and the DTSC.

AB 2872 (Chapter 144, Statutes of 2000) amended section 25404 in Chapter 6.11 affecting the Unified Program. Prior to this amendment, the statute (HSC, Chapter 6.11, section 25404.5(b)) allowed the Secretary to cover the necessary and

reasonable costs of OES, OSFM, and SWRCB in carrying out their responsibilities under Chapter 6.11 of HSC through a State surcharge. AB 2872 amended HSC section 25404.5(b) to allow the Secretary to cover the necessary and reasonable costs of all State agencies carrying out their responsibilities under the Unified Program through a State surcharge.

The Secretary adopted emergency regulations (R-00-06) to make the Title 27 regulations (CCR), consistent with the provisions of AB 2872. The emergency regulations now allow the Secretary to set the State surcharge to cover the necessary and reasonable costs of all State agencies implementing the Unified Program. In addition, the emergency regulations also allow the Secretary to annually review the State surcharge rates, and revise them, if necessary, but no more than once per year. The emergency regulations also establish a process for establishing a State surcharge which includes a 30 day public comment period for the State surcharge rates.

However, prior to the adoption of AB 2872 and subsequent amendments to the regulations in Title 27, (CCR) the Secretary did not have the authority to fund DTSC through the State surcharge for general oversight or specific program element oversight activities. Also, the SWRCB was not included in the formula for calculating the general oversight component. The State surcharge at that time consisted of two portions:

(1) the CUPA oversight portion (also known as APart A) which funded State activities related to overall Unified Program management/oversight. The State agencies included in Part A were OES and OSFM; and (2) the program element oversight portion (also known as APart B and APart D), which funded individual State agency activities necessary for implementation and oversight of specific program element(s) of the Unified Program. APart B funded the SWRCB's Underground Storage Tank program and APart D funded the OES's Accidental Release Prevention program. This rulemaking allows the costs of all State agencies responsible for the Unified Program implementation to be funded by the State surcharge, rather than specifying in regulations the State agencies entitled to State surcharge funding.

Another problem that occurred prior to the adoption of emergency regulations was the requirement for the Secretary to establish the State surcharge (tentative and final) by specified dates. The Secretary was required to establish the preliminary State surcharge no later than March 1, and the final surcharge no later than September 30 each year in the California Regulatory Notice Register (Z-Register). To be consistent with the statutes, the regulations needed to be amended to allow the Secretary to revise the State surcharge, if necessary, but no more than once per year. The emergency regulations allow the Secretary to publish the proposed revisions to the State surcharge in the Z-Register for a 30 day comment period. After receiving comments, the final surcharge rates are published

in the Z-Register, and become effective 60 days after their publication. Therefore, like the emergency regulations, the proposed regulations will: (1) eliminate confusion among CUPAs in billing and collecting the correct State surcharge amounts, which was caused by their different billing schedules and different State surcharge rates (tentative and final) in effect at the time of their billings; and (2) save the State's resources used in establishing the State surcharge rates by specified dates. This rulemaking will allow the emergency regulations to be adopted as permanent regulations.

In addition to including the provisions contained in the emergency rulemaking, this rulemaking will also define the term surcharge in Title 27 regulations to also mean A service charge.@ Although the term surcharge is defined in statute (HSC section 25404.5(b)), for years it has been interchangeably used by all stakeholders with the term A service charge,@ which is not defined in statute or regulations. The proposed regulations will allow the term surcharge, as defined in HSC section 25404.5(b), to also mean service charge. This will allow both terms to be used interchangeably.

## **CEQA COMPLIANCE**

Cal/EPA has determined this rulemaking project will not have a significant effect on the environment, and a proposed Notice of Exemption has been prepared.

## **PEER REVIEW**

This rulemaking only establishes administrative procedures for setting the State surcharge. It does not establish any scientific basis or portion that needs a scientific peer review according to HSC section 57004. Therefore, a peer review as is not required.

## **BUSINESS REPORT**

This rulemaking does not require businesses to write a new business report.

## **FISCAL IMPACT ESTIMATES**

**Mandates on Local Agencies and School Districts pursuant to Part 7 (commencing with Section 17500) of Division 4 of the Government Code:** None.

**Estimate of potential cost or savings subject to reimbursement pursuant to Part 7 (commencing with Section 17500) of Division 4 of the Government Code and other non-discretionary costs or savings to local agencies:** None.

**Costs or Savings to State Agencies:** The proposed regulations change the process followed to issue the State surcharge rates. They do not, in themselves, change the amount of costs that the State surcharge rates fund and therefore will have minimal fiscal and economic impact. Failure to adopt the rule, however, could result in a loss of funds to departments/boards receiving Unified Program Account funding.

**Costs or Savings in Federal Funding to State Agencies:** The Secretary has determined that provisions of this rulemaking will have no impact on federal funding of State agencies.

**Effect on Housing Costs:** The Secretary has made an initial determination that there are no effects on housing costs.

**Cost Impacts on Representative Private Persons or Businesses:** The Secretary is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

**Significant Adverse Economic Impact on Jobs/Business Expansion/Contraction:**

**(A) Creation or elimination of jobs within California** - The Secretary has determined that there will be no significant impact on the creation or elimination of jobs within California.

**(B) Creation of new businesses or the elimination of existing businesses within California** - The Secretary has determined that there will be no significant impact on the creation of new businesses or the elimination of existing businesses within California.

**(C) Expansion of businesses currently doing business in California** - The Secretary has determined that there will be no significant impact on the expansion of businesses currently doing business in California.

**(D) Ability to compete** - The Secretary has made an initial determination that there will not be a significant statewide adverse economic impact directly affecting business including the ability of California businesses to compete with businesses

in other states.

**Effect on Small Businesses:** The Secretary has determined that provisions of this rulemaking may have an effect on small businesses.

## **OVERVIEW**

The proposed amendments to the regulations would define the term "service charge" so that it may be equivalent to, or used interchangeably with, the term "surcharge," which is already established in statutes and regulations. Also, because emergency regulations are currently in effect, this rulemaking allows the State surcharge to continue to fund the necessary and reasonable costs of all State agencies responsible for implementing and enforcing the requirements of the Unified Program; and allows the surcharge (service charge) to continue to be established no more than once per year and become effective 60 days after being published in the California Regulatory Notice Register (Z-Register).

## **CONSIDERATION OF ALTERNATIVES**

The Secretary must determine that no reasonable alternative considered by the Secretary, or that has otherwise been identified and brought to the attention of the Secretary, would be more effective in carrying out the purpose for which the regulations are proposed or would be as effective and less burdensome to the affected public than the proposed regulations.

## **AVAILABILITY OF TEXT OF REGULATIONS AND STATEMENT OF REASONS**

Copies of the Notice, Initial Statement of Reasons and the text of the proposed regulations are posted to DTSC's Internet site at [www.dtsc.ca.gov/laws\\_regs/index.html](http://www.dtsc.ca.gov/laws_regs/index.html) or may be obtained from Ms. Ferber of DTSC's Environmental Analysis and Regulations Section as specified below. The information upon which Cal/EPA relied is also available at the address listed below.

## **POST-HEARING CHANGES**

After the close of the comment period, the Secretary may adopt the proposed regulations. If substantive changes are made, the modified text will be made available for comment for at least 15 days prior to adoption and sent to all persons who testified at the public hearing; all persons who submitted written comments at the public hearing; all persons whose comments were received by the agency during the public comment period; and all persons who requested notification from Cal/EPA of the availability of such changes.

Once a regulation has been adopted, the Secretary prepares a Final Statement of Reasons which updates the Initial Statement of Reasons, summarizes how comments were addressed and includes other material, as required by Government Code, section 11346.9. Copies of the Final Statement of Reasons may be obtained from Ms. Ferber at the address listed below. A copy of the Final Statement of Reasons will also be posted on DTSC's Internet site at [www.dtsc.ca.gov/laws\\_regs/index.html](http://www.dtsc.ca.gov/laws_regs/index.html), along with the date the rulemaking is filed with the Secretary of State and the effective date of the regulations.

## **CONTACT PERSONS**

Inquiries regarding technical aspects of the proposed regulations may be directed to Mr. Larry Matz of Cal/EPA at (916) 327-3442 or, if unavailable, Mr. Clyde West, of the Hazardous Waste Management Program, DTSC, at (916) 324-1804. However, such oral inquiries are not part of the rulemaking record.

Statements, arguments or contentions must be submitted in writing or may be presented verbally during the public hearing in order for them to be considered by the Secretary before he adopts, amends or repeals these regulations. To be included in this regulation package's mailing list, and to receive updates of this rulemaking, please leave a message on the DTSC mailing list phone line at 916-324-9933 or e-mail: [regs@dtsc.ca.gov](mailto:regs@dtsc.ca.gov).

Please direct all written comments, procedural inquiries and requests for documents to [jferber@dtsc.ca.gov](mailto:jferber@dtsc.ca.gov) or:

Ms. Joan Ferber, Regulations Coordinator  
Environmental Analysis and Regulations Section  
Department of Toxic Substances Control  
1001 Al Street, 22nd Floor  
P.O. Box 806  
Sacramento, California 95812-0806

Ms. Ferber can be reached at (916) 322-6409 or if Ms. Ferber is unavailable, please call Mr. James McRitchie, Chief, Office of Environmental Analysis, Regulations and



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Audits, DTSC, at (916) 327-8642. Comments can also be faxed to Ms. Ferber at (916) 323-3215.

Dated: \_\_\_\_\_

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Lisa Brown  
Assistant General Counsel for  
Enforcement